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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

B6

FILE:

[REDACTED]
SRC 01 163 51779

Office: NEBRASKA SERVICE CENTER

Date:

DEC 30 2004

IN RE:

Petitioner:
Beneficiary:

[REDACTED]

PETITION:

Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a hospital. It seeks to employ the beneficiary permanently in the United States as a registered nurse. The petitioner asserts that the beneficiary qualifies for a blanket labor certification pursuant to 20 C.F.R. § 656.10, Schedule A, Group I. The petitioner submitted the Application for Alien Employment Certification (ETA 750) with the Immigrant Petition for Alien Worker (I-140). The director determined that the petitioner had not established that the beneficiary possessed the necessary licensing credentials required by the regulations applicable to the admission of registered nurses under Schedule A, Group I.

On appeal, the petitioner, through counsel, submits a brief and asserts that the petitioner satisfied the applicable requirements for the position offered.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(a)(2) and (3) provides that a properly filed Form I-140, must be "accompanied by any required individual labor certification, application for Schedule A designation, or evidence that the alien's occupation qualifies as a shortage occupation within the Department of Labor's Labor Market Information Pilot Program." The "priority date of any petition filed for classification under section 203(b) of the Act which is accompanied by an application for Schedule A designation or with evidence that the alien's occupation is a shortage occupation with the Department of Labor's Labor Market Information Pilot Program shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [CIS]." 8 C.F.R. § 204.5(d).

The regulations set forth in Title 20 of the Code of Federal Regulations also provide specific guidance relevant to the requirements that an employer must follow in seeking certification under Group I of Schedule A. An employer must file an application for a Schedule A labor certification with CIS. It must include evidence of prearranged employment for the alien beneficiary signified by the employer's completion of the job offer description on the application form and evidence that the employer has provided appropriate notice of filing the Application for Alien Employment Certification to the bargaining representative or to the employer's employees as set forth in 8 C.F.R. § 656.20(g)(3). 8 C.F.R. § 656.22(a) and (b).

The regulation at 8 C.F.R. 656.22(c)(2) also states:

An employer seeking a Schedule A labor certification as a professional nurse (§656.10(a)(2) of this part) shall file, as part of the labor certification application, documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of

intended employment.¹ Application for certification of employment as a professional nurse may be made only pursuant to this §656.22(c), and not pursuant to §§ 656.21, 656.21a, or 656.23 of this part.

In this case, the immigrant visa petition was filed on April 24, 2001. The ETA 750-A accompanying the petition establishes that the position of registered nurse pays \$16.00 per hour.

With the petition, the petitioner submitted a copy of a letter from the Commission on Graduates of Foreign Nursing Schools stating that the beneficiary had achieved a passing score on the November 8, 2000 CGFNS Qualifying Examination. The director determined that the petitioner initially failed to submit sufficient evidence showing that the beneficiary had either passed the CGFNS or that she holds a full and unrestricted (permanent) license to practice nursing in the state of intended employment.

On January 9, 2002, the director instructed the petitioner to submit evidence to establish that the beneficiary either has a CGFNS Certificate or an unrestricted license to practice professional nursing in the state of intended employment.

In response, counsel submitted a copy of the beneficiary's CGFNS Certificate dated September 19, 2001.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary has passed any applicable licensure examinations or holds a full and unrestricted license to practice nursing in the state of intended employment.

On appeal, counsel provides previously submitted documentation and asserts:

Please be informed that when we filed the petition on April 24, 2001, we enclosed a letter from the Commission on Graduates of Foreign Nursing Schools certifying that Ms. Amante has successfully passed the CGFNS qualifying exam on November 08, 2000. The CGFNS certificate was subsequently issued on September 19, 2001. The passing score set for each examination is set at 400. Her score on the November 08, 2000 examination is 412.

The applicable regulations expressly require that a petitioner seeking a Schedule A, Group I labor certification for a professional nurse files the application for Schedule A certification with the I-140. The Schedule A application must be filed with evidence that the alien has passed the pertinent CGFNS or (NCLEX-RN) examination, or holds a nursing license in the state of intended employment. In this case, the record does clearly establish that the beneficiary meets this qualification. The letter from the Commission on Graduates of Foreign Nursing Schools clearly states that the beneficiary passed the November 8, 2000 CGFNS Qualifying Examination. CIS may not

¹ On October 2, 2002, the Department of Labor advised [CIS] that because many states accept passage of the National Council Licensure Examination for Registered Nurses (NCLEX-RN), a state licensing examination, it planned to pursue conforming amendments to the regulations at 20 C.F.R. 656.22(C)(2) and advised [CIS] that it may also accept passage of this examination as establishing eligibility for a Schedule A labor certification.

ignore the letter confirming the beneficiary's passing of the CGFNS Examination on November 8, 2000 and look only to the actual CGFNS Certificate that was issued at a later date.

In view of the foregoing, the AAO concludes that the director erred in finding that the petitioner has failed to establish that the beneficiary possesses the requisite credentials at the time of filing the visa petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden.

ORDER: The appeal is sustained.